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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,335	03/26/2004	Guo Jr Jau	4352RC	1587

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EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/811,335

Applicant(s)

JAU ET AL.

Examiner

Anthony Stashick

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03262004</u> . | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

1. Applicant is advised that should claim 16 be found allowable, claim 17 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).
2. Claim 17 is rejected as being the exact duplicate of claim 16. Any rejection set forth directed to claim 16 would also be applied to claim 17.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5, 6, 12-15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin 6,189,242. Lin '242 discloses all the limitations of the claims including the following: a shoe (Figure 1) having a sole 20 including at least one slot 21 formed therein; a cleat member 50 detachably attached to the at least one slot of the shoe sole (see Figure 1) for attaching to cycle pedal (see Figure 4); a plate 40 selectively attached to the shoe sole (see Figure 2); the plate including an opening 41 formed therein to receive the cleat member and to allow the cleat member to extend out of the plate and be attached to the cycle pedal (see Figures 2 and 4); at least one cleat element 50 detachably attached to the shoe sole; the shoe sole includes at least one

Art Unit: 3728

depression 27 formed therein and defined by a peripheral fence (see Figures 2-4), to partially receive the at least one cleat element and to anchor the at least one cleat element to the shoe sole (see Figures 2-4); the shoe sole including an outsole 40, an insole 30 and a cushioning device 33 disposed between the outsole and insole of the shoe sole; the outsole of the shoe includes a chamber formed therein to receive the cushioning device (formed by upwardly standing wall surrounding the sole); the insole 30 includes an opening formed therein (see Figure 1, opening under 33) to engage the cushioning device into the chamber of the outsole; the insole includes a cover 60 to enclose the opening of the insole; a shoe sole 20 including at least one slot 21 formed therein; a cleat member 50 detachably attached to the at least one slot of the shoe sole, for attaching to a cycle pedal; at least one cleat element selectively attached to the shoe sole (see Figure 4).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 5, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starner 5,079,968 in view of Lin 6,189,242. Starner '968 discloses all the limitations substantially as claimed including the following: a shoe sole 24; a cleat member 14 detachably attached to the shoe sole; a plate 16 selectively attached to the shoe sole and including an opening (center of 16) formed therein to receive the cleat member and to allow the cleat member

Art Unit: 3728

to extend out of the plate (see Figures 3-5); the plate includes at least one projection (edge of plate depending further than 36 or 38) extended downwardly therefrom for preventing the shoe sole from wearing while walking on pavement or floor; at least one cleat element 14 attached to the shoe sole; at least one cleat element 14 is selectively attached to the at least one extension of the plate (by at least 50 in Figure 5); the extension of the plate includes at least one depression formed therein and defined by a peripheral fence (peripheral fence is the sidewall of 160).

Starner '968 does not teach a slot in the sole and the cleat member attached to the at least one slot. Lin '242 teaches that a slot 21 can be formed in the sole of a shoe to attach a cleat to the shoe sole and allow for adjustability of the cleat with the sole bottom. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to attach the cleat to the bottom of the sole by having a slot within the bottom of the sole to allow for adjustability of the cleat, as taught by Lin '242.

7. Claims 3, 7-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 6 above in view of Walker et al 5,682,689. The references as applied in above paragraph 6 disclose all the limitations of the claims except for the shoe sole having at least one orifice formed therein and the plate including a bulge extending therefrom and engageable into the at least one orifice to anchor the late to the sole. Walker et al. '689 teaches the idea of using annular projection 74 extending from a plate into annular recesses 56 of the sole to prevent the plate from rotating on the sole. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place an extension on the plate that could mate with a recess in the sole to prevent the plate from rotating out of position on the sole, as taught by Walker et al. '689.

Art Unit: 3728

8. Claims 4, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 7 above, in view of Schaudt et al 6,754,984. The references as applied in paragraph 7 above disclose all the limitations of the claims except for at least one spike securing the plate to the shoe sole and a nut in the sole for attaching the spike and plate to the sole. Schaudt et al. '984 teaches that a spike 7 can attach a plate to a 26 to a sole to hold the plate onto the sole. Therefore, it would have been obvious to use a spike, such as that taught in Schaudt et al. '984, to attach and secure the plate to the sole to aid in gaining grip with the ground when in use. With respect to the nut in the sole, the threaded portions 26 of Starner '968 are art accepted equivalents of nuts and therefore meet this limitation of the claims.

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any

Art Unit: 3728

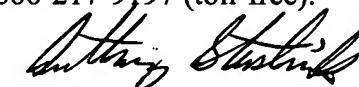
amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561.

The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick  
Primary Examiner  
Art Unit 3728

ADS